

IA90-031



TOWN OF CLARKSTOWN

POLICE DEPARTMENT



William J. Collins
Chief of Police

April 9, 1992

Professor Robert T. Simmelkjaar, Esq.
Chairman, Interest Arbitration Panel

RE: ROCKLAND COUNTY PATROLMEN'S BENEVOLENT ASSOC.
and TOWN OF CLARKSTOWN

Dear Professor Simmelkjaer:

After review of the Award pertaining to the above-stated case, I must enter a dissenting opinion based upon the following reasons:

That while there may have been a minor impact upon the Sergeants, there was not a substantial change in their duties and, in fact, they were only directed to perform their job as outlined in the Rockland County Job Description which was introduced into evidence.

It is further stated that there was no proof submitted by the Union that the Sergeants are performing out-of-title work, and this is acknowledged on Page 11 of the Award which concedes the lack of statistical information or job analysis to show that removing the Lieutenants from the squads had any impact or quantitative change on the Sergeant's position. The Union makes claim, but fails to prove that workload has been increased.

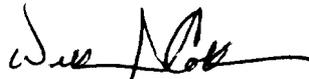
In their summary, the Union notes, "That the salary listed for 'Lieutenant' in the contract was the salary intended for the person with the responsibility of running the shift. That salary was only for Lieutenants who served as watch commanders." This is not factual, in that even during the period of 1987 through November 1990 when Lieutenants were assigned to squads, there were 314 out of a possible 1,095 or 29% of the tours of duty in any 12 month period that Lieutenants were scheduled off the work chart and Sergeants were running the shift. (This does not include additional time for periods of training, sick or disability.)

Further, the Award notes Lieutenant O'Shea's testimony in reference to his supervisory and administrative techniques which were in contrast to the techniques and administrative style that was exercised by Lieutenant Sherwood, even prior to November 1990. Without testimony from the other Lieutenants as to their practices, the Union has failed to meet the burden of proof, which falls upon them, per PERB requirements.

There was no testimony in reference to the number of (if any) emergencies or decisions that have been made in the field without the benefit of a Lieutenant or other senior officer to demonstrate that the sergeants have been impacted at all by the removal of the Lieutenants from the squads, and thereby assuming the "ultimate accountability." To the contrary, Sergeant O'Neill testified to the duties of a Sergeant which are "as desk sergeant, to supervise dispatchers and desk officer and receive civilian complaints, and as patrol sergeant to do turn-out, review log and paperwork from previous shift and to supervise patrol officers." This has not basically changed since the creation of additional patrol sergeant's positions in March of 1988. Sergeant O'Neill further admitted NEVER having to ask Lieutenant Sherwood for help.

It is the contention of the respondent Town of Clarkstown that, as spelled out on Page One of our summary statement, that it is the responsibility of the petitioner to establish impact by substantial evidence, and then establish that the impact justifies a change in terms and conditions of employment. As stated at the hearing and in summary, the Union has failed to meet both of these standards, and I must, therefore, dissent from the opinion of the majority of the panel.

Respectfully,



William J. Collins
Employer Panel Member

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
CASE NO. IA 90-031, M90-495

IN THE MATTER OF COMPULSORY
INTEREST ARBITRATION

-BETWEEN-

ROCKLAND COUNTY PATROLMEN'S
BENEVOLENT ASSOCIATION,

PETITIONER

-AND-

TOWN OF CLARKSTOWN,

RESPONDENT

AWARD OF THE
PUBLIC ARBITRATION
PANEL

INTEREST ARBITRATION PANEL:

Professor Robert T. Simmelkjaer, Esq.
Chairman, Public Panel Member

Chief William J. Collins
Employer Panel Member

Sergeant Vincent White
Employee Panel Member

APPEARANCES

Maureen Mc Namara, Esq., Attorney for Petitioner, PBA
Ronald A. Longo, Esq., Attorney for Respondent,
Town of Clarkstown

INTRODUCTION

The Rockland County Patrolmen's Association Inc. (hereinafter the "Union or P.B.A.") petitioned the Public Employment Relations Board, pursuant to Part 205.4 of the Rules of Procedure and Section 209 (4) of the Civil Service Law of the State of New York, for the appointment of a public arbitration panel to resolve the impasse between the parties. The Respondent/Employer is the Town of Clarkstown.

The impasse in negotiations according to the petitioner, is related to the "removal of the lieutenants from the patrol squads in the Town of Clarkstown Police Department." The petitioner's position is that the removal of the lieutenants in the squads has resulted in additional responsibilities being placed on the patrol sergeants. As a result of these additional responsibilities the petitioner maintains that "all patrol sergeants should receive additional compensation" equivalent to that currently paid lieutenants. In addition, the petitioner maintains that the change has "adversely impacted upon the sergeant's ability to utilize accrued time/leave credits in the same manner as previously" (J-1).

In its Answer to the Petition for Interest Arbitration, the Town of Clarkstown maintained "that there has been no impact on the members of the bargaining unit, specifically sergeants, as a result of the removal of lieutenants from the patrol squads in the Town of Clarkstown

Police Department that would require changes in the terms and conditions of employment enjoyed by sergeants in the bargaining unit" (J-2).

On July 24, 1991, the Public Interest Arbitration Panel was designated. The composition of the Panel was changed on November 15th, 1991. The Panel formally convened on November 13, 1991. On November 13th and December 5th, 1991 the Union presented its position. On December 5th, 1991, the Town presented its position. The parties agreed to submit Summary Statements in lieu of briefs due on January 13, 1992. Upon receipt of these statements, the Chairman closed the hearing on January 15th, 1992. The Panel met in Executive Session on January 15th, February 11th and March 24, 1992.

The Town and the Union were represented by counsel throughout these proceedings and afforded full opportunity to present evidence, witnesses and arguments in support of their respective positions. The Public Interest Arbitration Panel admitted as evidence ten (10) Joint Exhibits and four (4) Town Exhibits. All of the evidence submitted has been carefully considered by the Panel in the preparation of this opinion and its accompanying award.

STIPULATIONS

- 1) From 1987 to November, 1990 the Clarkstown Police Department had lieutenants assigned to specific squads and they served as the shift commander.
- 2) For at least ten (10) years prior to 1987 there were lieutenants who served as shift commanders on days from

8 a.m.- 4 p.m. and 4 p.m. to 12 a.m., however, with respect to coverage of the midnight shift lieutenants were assigned on Friday and Saturdays from 6 p.m. to 2 a.m. and occasionally 8 p.m. to 4 a.m. The lieutenant had the option to extend any of the shifts which included midnight (ie, 4-12, 6-2, 8-4).

3) In November, 1990, all patrol lieutenants were removed from their squads and given specific non-patrol assignments with the exception of one lieutenant who was given the duty of being in charge of the entire patrol, with minor exceptions.

ANALYSIS/DISCUSSION

The Panel (Panel Majority) is persuaded that a substantial impact has occurred as a result of the Town of Clarkstown's decision to remove the lieutenants from their former supervision of the patrol squads. The parties have stipulated that from 1987 to November, 1990 the Police Department had lieutenants assigned to specific squads and they served as the shift commanders. The parties have further stipulated that at least for ten years prior to 1987 these lieutenants who served as shift commanders worked on days from 8 a.m. to 4 p.m. and 4 p.m. to 12 a.m., with variable shifts assigned on Friday and Saturday from 6 p.m. to 2 a.m. and occasionally 8 p.m. to 4 a.m.

The testimonial and documentary evidence adduced at the hearing established that under the pre November, 1990 organizational arrangement the lieutenant assumed the direct responsibility for running the shift, would directly supervise the sergeants and was ultimately accountable for activities on that shift. Lieutenant George O'Shea testified credibly that when sergeants did not want to make

a decision, they would contact a lieutenant who would make the decision. He further testified that the lieutenants would make the critical decisions which might involve going to the scene of a crime or accident and directly supervising the sergeants and police officers.

On November 29, 1990, Chief William Collins issued an administrative order pursuant to the General Order manual which stated:

effective immediately, Lieutenants shall no longer be assigned to individual squads (T-2)

As a result of the directive, the thirteen (13) patrol sergeants assumed the duties of shift supervisors formerly discharged by the lieutenants for over ten years. As an alternative, the administrative order directed all patrol matters through the chain of command to patrol lieutenant Sherwood. However, unlike the immediate access to patrol or squad lieutenants to which patrol sergeants had become accustomed, Lt. Sherwood's availability was limited to a daytime shift of 7 a.m. to 3 p.m. during the weekdays.

In contrast to former Lt. O'Shea who would monitor the radio while working and be alert to incoming calls from sergeants, Lt. Sherwood relies upon the patrol sergeants to solve most problems on the scene.

In this connection, the lieutenant's job description under Typical Work Activities includes: "attends and assumes command at scenes of emergencies" (J-6). The sergeant's job description under Typical Work Activities does not include a

similar function (J-7). Both lieutenants and sergeants exercise supervision over police officers "directly or by inspection and patrol reports", however the distinguishing responsibility of lieutenants would be their supervision of "work of a complex nature." In the Panel's opinion prior to November, 1990 the Town's interpretation of the lieutenant's complex work included direct supervision of sergeants on a tour and the assumption of command at emergencies. With respect to these uniquely lieutenant functions there is no significant difference between the Town's job description (J-8) and the Rockland County Personnel Office job description (J-6).

The Panel finds that the job of sergeant has been changed in a fundamental sense, increasing the decisionmaking responsibilities of the thirteen (13) sergeants and their level of accountability for their decisions made in the field. Lieutenant Sherwood despite his practice of communicating through memoranda is once removed from shift supervision. For the most part he manages from headquarters, rarely comes into the station while off duty "except on two occasions involving the arrest of police officers", and is virtually incommunicado after his day shift ends. In contrast to Lt. Sherwood who testified that he has no meetings with the sergeants on the midnight shift, former Lt. O'Shea testified that while he worked on the midnight shift he regularly informed the Captain of tour activities.

After 11/90 the period of time during which no lieutenant is available increased from a maximum of 42 hours (2 a.m. to 8 p.m. X 7 days) to 128 hours of the 168 hour week.

Although the Town argues that "sergeants by reason of their rank, pay differential and status have always been in a position to 'hold the bag' and ... always been responsible for their decisions", the issue is whether those decisions as contemplated by the parties when they entered into the current collective bargaining agreement included shift supervision. There is substantial evidence that the role of watch commander was reserved to the three lieutenants rather than the thirteen sergeants. Even if, as the Town notes, the lieutenant delegated responsibility to the sergeant for an on-site decision or "directed the sergeant to make a decision" ultimately accountability for the decision would rest upon the lieutenant. Moreover, the willingness of Lt. Sherwood to come in when called is an insufficient substitute for a watch commander, particularly when sergeants are discouraged from calling the sole patrol lieutenant and urged instead to resolve matters "by the appropriate" or senior sergeant (T-1, T-2). Here again, sergeants who formerly could refer situations to a shift supervisor must under the new directive determine the senior member of their rank before a decision is made -- a process which might be problematic in an emergency situation.

The job functions of sergeants have also changed with respect to complaint card processing. According to Lt. O'Shea, following the review of complaint cards conducted by the sergeants, he would conduct a further review and send back approximately 20% for "quality control." He estimated that such reviews took 2-3 hours per week. Lt. Sherwood testified that only he review these complaint cards "at random" since many are now completed correctly.

Needless to say, the Police Department has achieved many of its objectives as a result of the changes implemented. Among the benefits cited by the Town are consistency in policy implementation managed by the captain and one patrol lieutenant instead of three; consistency in civilian complaint administration; and the assignment of one training lieutenant conversant with changing training laws. Personal advantages have also accrued to the lieutenants in that they have a "better schedule." Sergeants are not perceived to have benefitted from the change unless it's their opportunity to "run squads without interference from lieutenants."

The Town maintains that the increase in the number of sergeants from two to three has alleviated the responsibilities of squad sergeants and facilitated the removal of the lieutenants. However, the quantity of sergeants available is distinguishable from the quality of work they perform. Thus a sergeant who has assumed the task of shift supervision is not relieved of his duty by the

assumption of supervisory duties by a fellow sergeant similarly situated.

The Town further maintains that "the fact that a lieutenant is no longer 'in the squad' does not necessarily mean that sergeants do not have the degree of supervision which is called for under their job description" (Town Summary, p.3). In the Panel's opinion, the best evidence of the sergeant's duties, absent very specific job descriptions, is the content of those duties when the instant collective bargaining agreement was negotiated. Once the Union proves that the workload has been increased resulting in an impact on the sergeants, the burden shifts to the Town to justify the increase as either within the existing job function or de minimus in impact.

The Union established that the current salary schedule is predicated upon increasing salaries for increased responsibilities. At the time lieutenants were given a salary that was 15% higher than the sergeants, it was assumed that the lieutenants were supervising the sergeants, acting as watch commanders and thereby assuming the responsibility for running a shift. The Union is persuasive when it notes that the shift differential for lieutenants was "only" for lieutenants who served as watch commanders since the "only other lieutenants - the Administrative lieutenant and the detective lieutenant - were paid a higher salary under the contract" (Union Summary, p.5).

The final issue introduced by the Union at the hearing entails the reduction of vacation picks or accrued leave time credits available to sergeants under the current arrangement. Prior to 11/90 the four supervisors of a shift (3 sergeants and 1 lieutenant) picked their vacations together. During the 9 week prime summer vacation period, two supervisors (ie. two sergeants) could be on vacation, leaving, for example one lieutenant and one sergeant on duty. After 11/90, with the lieutenants removed, only one sergeant of the three sergeants could be off at a given time except for a designated four week period where two sergeants could be off at the same time. Sgt. O'Neil testified that as the sergeant with the least seniority he was unable to get his vacation pick in July or August of 1991. Sgt. O'Neil's problem was eventually solved when a sergeant agreed to accommodate him.

Remedy

PERB has determined that police and firefighters can resort to the impasse procedures when negotiations are unsuccessful in resolving the impact of a change on the terms and conditions of employment. City of Newburgh, 63 NY 2d 793 seems on point in this regard in that the decrease in the number of firefighters assigned to each shift affected the terms and conditions of employment can be seen as comparable to the increase in sergeant's responsibilities in the instant case. PERB has also held that the "appropriateness of salary levels in relationship to

particular duties and responsibilities are mandatory items of negotiations."

The Panel (Panel Majority) has found that an impact has occurred. Patrol sergeants are currently performing the duty of shift supervision formerly assumed by the patrol lieutenants. In effect these patrol sergeants are entitled to out-of-title pay for performing a job for which they are not compensated. The Panel concludes that the sergeants who supervise the squads are entitled to additional compensation, although the Panel majority is not persuaded that they are defacto lieutenants. Lieutenants by virtue of their rank, experience and skills are still entitled to a pay differential over and above even those sergeants who assume the task of shift supervision. Absent statistical data or job analysis, it is difficult to quantify the portion of the lieutenant's position and hence salary that shift supervision encompasses. Various estimates up to 75% have been cited but unsupported by data. The Panel majority recognizes that many of the functions performed by lieutenants in their current central office functions could not necessarily be performed by sergeants. Therefore, as a compromise, the Panel AWARDS as follows:

1) Those patrol sergeants who have served as shift supervisors since November, 1990 shall receive as compensation a 7 1/2% differential above the base salary paid to sergeants and therefore 7 1/2% less than the salary paid to lieutenants.

2) For those eligible this compensation shall be retroactive to November, 1990.

3) The Panel remands the issue of accrued time credits or vacation picks to the parties for administrative solution. The capacity of the Chief of Police to increase the number of weeks wherein two sergeants may be on vacation presents a feasible alternative.

Concur / Dissent

Dated: April 9, 1992

STATE OF NEW YORK
COUNTY OF ROCKLAND

On the 9th day of April, 1992 before me came Robert T. Simmelkjaer to me known to be the person who executed the foregoing Arbitration Award and he duly acknowledged to me he executed the same.

Robert T. Simmelkjaer
Robert T. Simmelkjaer, Chair

CORNELIA A. ALEMI
Notary Public, State of New York
Residing in Rockland County
No. 4765478
Commission Expires Dec. 31, 1992

Cornelia Alemi

Concur / Dissent

Dated: 4/2/92

STATE OF NEW YORK
COUNTY OF ROCKLAND

On the 9th day of April, 1992 before me came William J. Collins to me known to be the person who executed the foregoing Arbitration Award and he duly acknowledged to me he executed the same.

Chief William J. Collins
Chief William J. Collins
Employer Panel Member

CORNELIA A. ALEMI
Notary Public, State of New York
Residing in Rockland County
No. 4765478
Commission Expires Dec. 31, 1992

Cornelia A. Alemi

Concur / Dissent

Dated: 4/9/92

STATE OF NEW YORK
COUNTY OF ROCKLAND

On the 9th day of April, 1992 before me came Vincent White to me known to be the person who executed the foregoing Arbitration Award and he duly acknowledged to me he executed the same.

Sgt. Vincent White
Sergeant Vincent White
Employee Panel Member

CORNELIA A. ALEMI
Notary Public, State of New York
Residing in Rockland County
No. 4765478
Commission Expires Dec. 31, 1992

Cornelia A. Alemi